IN THE HIGH COUERT OF BOMBAY AT GOA

WRIT PETITION NO. 145/2005

Dr. Dattaprasad S. Nagvenkar,
aged 24 years, Indian National,
resident of Sodiem, Siolim,
Bardez, Goa. ..... Petitioner.

V/s.

(1)State of Goa, through its
Chief Secretary having Office at
Secretariat, Panaji, Goa

(2) The Dean, Goa Medical College,
having office at Bambolim, Goa.

(3)The Goa University,
through its Registrar, having office
at Bambolim, Goa.

(4)Medical Council of India,
through its Secretary, Aiwam-E-Galib Marg,
Kotla Marga, Sundari
College for Women,
New Delhi 110 002. ..... Respondents.

Mr. M.S. Sonak, Advocate for the petitioner.

Mr. M.B. D'Costa, Advocate General with Mr. J.A. Lobo, Addl. Govt. Advocate for respondents No.1 and 2.

Mrs. A.A. Agni, Advocate for respondent No.3.

Respondent No.4 served - absent.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

DATE : 25th April, 2005.

ORAL ORDER : (Per LAVANDE, J.)

The petitioner was admitted to the First Year M.B.B.S. Course at the Goa Medical College in the academic year 1999-2000. The petitioner appeared for the final year M.B.B.S. Examination in January-February, 2004. The results were declared on 11/2/2004. The petitioner failed in two subjects, namely General Medicine and Obstetrics & Gynaecology. On 17.2.2004, the petitioner applied for revaluation to respondent No. 3. Upon revaluation, the petitioner was declared passed in Obstetrics & Gyneacology. In terms of the Rules and Regulations in force, the petitioner was granted grace marks in General Medicine. Consequently, on 27.4.2004, the petitioner was declared passed his Final Year M.B.B.S. Examination. On 1.5.2004, the petitioner commenced his Compulsory Rotatory Internship of one year. On 18.3.2005, the petitioner applied to the respondents for issue of certificates which were necessary for consideration of his candidature to the Postgraduate Degree and Diploma Courses, as also the Short Term Residency Post. However, the petitioner was not issued certificates. The petitioner was also not issued application forms for admission to the Postgraduate Degree and Diploma Courses as also the Short Term Residency Post. On 7.4.2005, the petitioner made a representation to respondent Nos.2 and 4, seeking condonation of internship for few days.

On 11.4.2005, the petitioner filed the present petition, seeking following reliefs :

> (A) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondents to do the following :
>
> (i) To grant to the Petitioner Application/Admission Forms for admission to the Postgraduate Degree/Diploma Courses at the Goa Medical College and to consider the same for the Academic Year 2005-2006 forthwith;
>
> (ii)To grant to the petitioner Admission/Application Forms for Short Term Junior Residency post and to consider the same for the Academic Year 2005-2006 forthwith.
>
> (iii)To grant to the Petitioner "Attempt Certificate" for which the Petitioner has already made Application on 18.3.2005, as the same is required to be submitted along with application for admission for Post Graduate Course as also the Application for Short-Term Junior Residency Post.

2. Upon notice being issued, respondent No.2 has filed affidavit opposing the petition on various grounds.

3. Heard Mr. Sonak, learned Counsel for the petitioner, Mr. M.B. D'Costa, learned Advocate General for respondent No.1 and 2 and Mrs. Agni, learned Counsel for respondent No.3. Inspite of service of notice,

none appeared on behalf of respondent No.4. Mr. Sonak, learned Counsel appearing on behalf of the petitioner, at the outset, submitted that the petitioner is not seeking condonation of delay as prayed for in his representation dated 7.4.2005 to respondents No.2 and 4. It is submitted that although in terms of the Goa (Rules for admission to Postgraduate Degree and Diploma Courses of the Goa University at the Goa Medical College) Rules 2004, (hereafter referred to as "the Rules 2004") the last date for receipt of application was 8th April, 2005 and the last date for counseling and selection for registration for the post-graduation is 25th April, 2005, the same are not mandatory and it is not necessary for the petitioner to complete his compulsory rotatory internship before the last date of receipt of the application, which is 8th April, 2005. According to the learned Counsel, because of no fault of the petitioner, the petitioner could not complete complete the internship of one year before the date fixed for submitting the application and, therefore, the respondents are not entitled in law to refuse application/admission forms for admission to the Postgraduate Decree and Diploma Courses at the Goa Medical College. According to the learned Counsel, the petitioner cannot be faulted for not completing the internship of one year, but the fault entirely lies with respondents No.1, 2 and 3 inasmuch upon revaluation which was delayed on account of the delay in revaluation, the petitioner could not complete one year internship before the date fixed for submitting the applications.

According to the learned Counsel the crucial date is 2nd May, 2005 which is the date of joining the courses and since on that day the petitioner would complete one year of compulsory rotatory internship, the petitioner is entitled to apply for admission to the courses and the action of the respondents in refusing to given admission forms is arbitrary and patently illegal. The learned Counsel submitted that in terms of Postgraduate Medical Education Regulations, 2000 ('the said Regulations' for short) framed by the Medical Council of India, the petitioner qualifies for the admission to the Postgraduate Medical Course since on the date of commencement of the course he would possess MBBS Degree and, therefore, would be eligible for admission for the said course. According to the learned Counsel, since the petitioner was declared passed after revaluation, the petitioner cannot be made to suffer on account of fault of respondents No.2 and 3 and the petitioner cannot be refused the admission on the ground that he has not completed the internship before the date fixed for submission of the applications. In support of his submissions, the learned Counsel relied upon the Judgments in ***Vijay Devji Aiya vs. The University of Bombay & ors.*** (1983(2) Bom. C.R.1); and ***Ku. Sadhana v. Vikram University, Ujjain and ors.*** (AIR 1986 MP 181). According to the learned Counsel, the ratio laid down by the Full Bench Judgment of this Court in ***Dr. Rakesh Ravi vs. The Dean, Goa Medical College and others,*** (1998 (1) Goa L.T. 270), which has held that Eligibility Rule III(1)(iii) is

mandatory, is not applicable in the present case, inasmuch as the issue in the said Full Bench decision was entirely different, having regard to the questions which arose for determination in that matter.

4. Mr. D'Costa, learned Advocate General submitted that even in terms of Regulation 8(8) of the said Regulations, every student, selected for admission to postgraduate medical course in any of the medical institutions in the country, should possess recognised MBBS Degree or equivalent qualification and, therefore, as on the date of submitting the application, the student should possess MBBS decree or equivalent qualification. According to the learned Advocate General, in terms of the Regulations 1997, every candidate after passing the MBBS Examination has to undergo compulsory rotatory internship to the satisfaction of the University concerned for a period of 12 months so as to be eligible for the award of Bachelor of Medicine and Bachelor of Surgery (MBBS) and full registration. The petitioner having not completed the internship and having not obtained the MBBS Degree, on the date fixed for submission of the application, the petitioner is not entitled to the reliefs sought for in the petition. According to the learned Advocate General, the ratio laid down in ***Dr. Rakesh Ravi's*** case, is squarely applicable in the present case, since the Full Bench of this Court has held that the candidate must complete compulsory rotatory internship of one year, prior to the last date of submission of the application for

admission to the Postgraduate Courses. According to the learned Advocate General, the petitioner having not submitted the application on the last date fixed for submission of the application, and the petitioner having not completed his internship on that day, the petitioner is not entitled to the reliefs sought for.

5. Mrs. Agni, learned Counsel appearing for respondent No.3 submitted that the petitioner having not obtained the MBBS Degree, after completing the internship, is not entitled to seek admission to the Postgraduate Course. According to the learned Counsel, respondents No.2 and 3 cannot be faulted for declaring the petitioner passed, upon revaluation being granted. According to the learned Counsel, the petitioner having not completed the internship and having not obtained the MBBS Degree as on the date fixed for submission of the application, the petitioner cannot be granted the reliefs in the petition. According to the learned Counsel, the petitioner can be granted only time to submit proof of having passed the examination. In support of her submissions, the learned Counsel relied upon the following authorities :

(1) ***The Principal, King George's Medical College, Lucknow vs. Dr. Vishan Kumar Agarwal and anr.*** (AIR 1984 SC 221);

(2) ***Charles K. Skaria and ors. v. Dr. C. Mathew and oers.*** (AIR 1980 SC 1230);

(3) ***Dr. Dinesh Kumar and ors. v. Motilal Nehru Medical***

College and ors. (AIR 1986 SC 1877).

6. We have considered the submissions made by the learned Counsel and we have also gone through he authorities relied upon by the learned Counsel for the parties. The main issue which arises for consideration in the present petition is whether it is mandatory for the petitioner to have completed his compulsory rotatory internship, prior to the last date of submission of the application for admission to the Postgraduate courses, so as to be eligible to apply for the Postgraduate Degree and Diploma Course at the Goa Medical College.

7. In terms of the Goa (Rules for admission to Postgraduate Degree and Diploma Courses of the Goa University at the Goa Medical College) Rules 2004, the last date for submitting the application was 8th April, 2004 and the date fixed for counselling and selection for registration is 25th April, 2005.

8. In ***Dr. Rakesh Ravi's*** case, the Full Bench of this Court has held that eligibility Rule III(1)(ii) is mandatory. It would be appropriate to quote said Rule III (1)(ii) which reads as under :

> "**Rule III :** Eligibility, Preference and Order of Merit.
> (1)Eligibility.
> Candidates applying for the admission to the post graduate degree/diploma course shall :-

(i) ....

(ii) Have registered with Indian or State Medical Council after completing the compulsory internship of one year."

9. Rule 3 (1)(ii) of The Goa Rules 2004, reads as under :

"3. *Eligibility, Preference and Order of Merit.* -
(1) Eligibility. - Candidates applying for admission to the postgraduate degree and or diploma courses shall :-
(i) .....
(ii) have completed Compulsory Rotatory Internship of one year on or before the last date for receipt of application;"

Rule III(1)(ii) which was considered in ***Dr. Rakesh Ravi's*** case and Rule 3(1)(ii) of The Goa Rules 2004 clearly reveal that they are pari materia. Although the issues involved in Dr. ***Rakesh Ravi's*** case were not similar to those involved in the present petition, still the fact remains that the Full Bench of this Court has interpreted the provision which is pari materia Rule 3(1)(ii) of The Goa Rules 2004 and has held that it is mandatory, therefore, we are not inclined to take different view than the one taken by the Full Bench of this Court in ***Dr. Rakesh Ravi's*** case.

10. Moreover, the Regulation 8(3) of the Post Graduate Medical

Education Regulations 2000 (hereinafter, referred to as `the Regulations 2000') provides that every student selected for admission to postgraduate medical course in any of the medical institutions in the country, shall possess recognized MBBS degree or equivalent qualification and should have obtained permanent Registration with the Medical Council of India, or any of the State Medical Councils or should obtain the same within one month from the date of his admission, failing which the admission of the candidate shall be cancelled. The said regulation reveals that every student selected for admission to the Post Graduate Medical Courses should possess recognized MBBS Degree or equivalent qualification. This clearly implies that as on the date a student is selected for the Post Graduate Course, he must possess recognized MBBS Degree or equivalent qualification. That being the position, the petitioner cannot be said to possess MBBS Degree on the date fixed for selection i.e. 25th April, 2005 and without possessing MBBS Degree, he is not eligible to apply for the Post Graduate Course. In the present case, the fact remains that the petitioner has not completed the compulsory rotatory internship even on the late date fixed for selection for registration. That being the position, we are unable to accept the submission of Mr. Sonak that the petitioner is entitled to get forms for admission to the Post Graduate Decree and Diploma Courses for the academic year 2005-06 and to apply for the same. No doubt, Mr. Sonak is right in contending that the petitioner cannot be blamed for not

completing the internship before the last date fixed for selection for registration for Post Graduate Degree and Diploma Courses. But this fact, by itself, does not make the petitioner eligible to apply for admission for Post Graduate Degree and Diploma Courses. Moreover, the petitioner has filed the present petition even after expiry of the last date fixed for submitting the applications and, therefore, on this ground also the petitioner is not entitled to the reliefs sought for by him. The facts in the cases of ***Vijay Devji Aiya vs. The University of Bombay & ors.*** (supra) relied upon by the learned Counsel appearing for the petitioner are not similar to the facts in the present case. In so far as Judgment in the case of ***Ku. Sadhana v. Vikram University, Ujjain and ors. (supra),*** we are unable to place reliance upon the same in view of the Judgment in Dr. Rakesh Ravi's case and the said Regulations. We are, therefore, unable to place reliance on the said two Judgments in support of the submissions made by the learned Counsel for the petitioner. We, therefore, hold that the petitioner is not eligible for admission to the Post Graduate Degree and Diploma Courses.

11. In view of the above discussion, we do not find any merit in the petition and, therefore, the same is summarily rejected. No order as to costs.

A.P. LAVANDE, J

N.A. BRITTO, J.